

THE GEORGE WASHINGTON UNIVERSITY
Washington, D. C.
Minutes - The Faculty Senate
Regular Meeting, Friday, November 12, 1971
Faculty Conference Room, sixth floor of the Library

Minute 1 President Elliott presided. The meeting was called to order at 2:10 p.m.

Members Present

Lloyd H. Elliott
Frederick R. Houser
Arthur E. Burns
John Parks, M. D.
Richard C. Allen
Otto Bergmann
Daniel R. Cloutier
Vincent J. DeAngelis
Marvin Eisenberg
Raymond R. Fox
William B. Griffith
Philip H. Highfill, Jr.
Arthur D. Kirsch
Norman Kramer, M. D.
Frederick C. Kurtz
Hugh L. LeBlanc
Anthony Marinaccio
Charles B. Nutting
Howard C. Pierpont, M. D.
John P. Reesing, Jr.
David Robinson, Jr.
Robert P. Sharkey
Reuben E. Wood

Members Absent

Harold F. Bright
James C. Dockeray
Robert Kramer
Harold Liebowitz
Calvin D. Linton
Burton M. Sapin
Rodney Tillman
Grover L. Angel
Roderic H. Davison
Leon Gintzig
Harold C. Hinton
Herman H. Hobbs
Walter K. Kahn
George V. Vahouny

Minute 2 The minutes of the regular meeting of October 8, 1971, were approved as distributed.

Minute 3 Dr. Pierpont reported that the Executive Committee had reconsidered the scheduled January 14 Senate meeting. Since it would come at a time when the University was not in session, and there was no backlog of business, it was recommended that -- unless something special developed -- the meeting be cancelled. Dr. Pierpont so moved and Professor Griffith seconded. The vote was taken and the motion carried unanimously.

Minute 4 Chairman Charles B. Nutting of the Committee on the Judicial System presented the General Rules of Procedure for Courts and Hearing Bodies for the information of the Senate. Professor Nutting explained the Rules were not an action item, having been provided for under Section 222 of the Judicial System for Non-Academic Student Discipline. Pursuant to that requirement the Committee on the Judicial System had asked University Representative Richard C. Allen to prepare the Rules, and he had done so. They had been reviewed and approved by the Committee, and Professor Robert C. Park, draftsman of the Judicial System, had approved them as well.

The elements of the Judicial System had been retained, and the language used was a nonlegalistic as possible.

Professor Allen amplified it was the sense of the Committee on the Judicial System that the Senate should see the Rules and be reassured that its will was being carried out. To delineate the drafting, he read the following two paragraphs from a letter he had sent to Professor Nutting:

"Frankly, I have been greatly concerned by the prospect of creating yet another massive document to be added to the Judicial System Statement, the Statement of Student Rights and Responsibilities, and the Special Rules which each court and hearing body is directed to prepare by Section 222.1. There is a Frankensteinian aspect to a quest for simplicity that seems to find expression only in complexity.

"I thought at first that I would keep the General Rules as brief as possible, covering only those aspects of procedure not dealt with in the other documents. But that would require parties and court members to keep the whole batch at hand, not quite knowing in which one the relevant point might be found. Finally, I decided to do just the opposite - to try to put everything in the General Rules, in simpler language, chronological order, and with references where necessary to the precise sections of the other documents dealing with matters too detailed to warrant inclusion in a set of rules (such as the lengthy descriptions of sanctions, and the authority and composition of courts, etc.). What I hope I have ended up with is a comprehensive, but readable, document which, for 99% of the questions that come up can be the sole reference and authority. You and the Committee on the Judicial System will have to decide how far I have fallen short of that goal."

Professor Park stated the Rules carried out the provisions of the Judicial System, and it was his belief there were no substantive changes in what the Senate had approved.

Copy of the Rules is attached to these minutes.

Professor Nutting then presented 71/5, A Resolution Concerning Editorial Changes in the Document Relating to the George Washington University Judicial System for Non-Academic Student Discipline. He stated the reforms/amendments were purely editorial and did not propose substantive changes. It was being recommended that references to Section 219 (rejected by Senate action) and to academic matters be deleted. Both the Committee on the Judicial System and the Executive Committee had approved the changes, and he moved their adoption. Professor Highfill seconded. The question was put, voted upon, and the motion was adopted unanimously.

Minute 5a Dr. Pierpont nominated Hugh L. LeBlanc, Professor of Political Science and Public Affairs and Member of the Senate, for Chairman of the Senate Committee on Physical Facilities to replace Chairman Herman H. Hobbs during his 1972 Spring Semester sabbatical. There were no nominations from the floor, it was moved and seconded nominations be closed, the vote was taken, the Professor LeBlanc was elected unanimously.

- 5b Dr. Pierpont nominated Presson S. Shane, Professor of Engineering Administration, former member of the Senate Executive Committee, and present member of the Committee on Appointment, Salary and Promotion Policies, for Chairman of that Committee to replace Chairman Arthur D. Kirsch during his 1972 Spring Semester sabbatical. There were no other nominations, the nominations were closed, the vote taken, and Professor Shane was elected unanimously.
- 5c Professor David Robinson, Jr., Chairman of the Committee on University Objectives, reported informally on the review of the May 1971 Report of the Commission on Governance. Among the substantial changes recommended by the Commission was that, instead of the Faculty Senate being spokesman for the faculty, there be faculty input as well as input from trustees, administrative officers, students, alumni, and public members to an All-University Assembly. In addition, it was recommended that faculty as well as students be represented directly by membership on designated committees of the Board of Trustees. Most of the Committee's time had been spent talking about the possible roles of these various inputs to the advice and decision-making process of the University. There was some disagreement among the committee members as to the merit of some of the proposals.

The core of the problem was that the Commission's report did not spell out the role of the Faculty Senate, did not suggest what the function of the All-University Assembly would be vis-a-vis the Faculty Senate, and did not work out what the representation of the various bodies should be on the All-University Assembly.

What is apparently envisioned by the University Administration is that, if the Commission's report is approved, a steering committee would be constituted to draft details. It was hoped that the University Objectives Committee could

- 1) clarify the issues raised by the report and present them for Senate consideration and deliberation, and
- 2) express its own views as to merit or lack of merit of specific proposals.

The Committee had found that dealing with the report in its present form -- more preamble than finished product -- had been a difficult task. The Chairman had not worked out the details of his report to the Senate, but at a minimum expected to present an analysis of the problems, and some indication of the sentiment of the Committee concerning the parts dealt with. Professor Robinson concluded by forecasting a very challenging December Senate meeting.

Minute 6 Brief Statements

Dr. Pierpont reported the procedure proposed for future nominations of candidates for appointment to Board of Trustees standing committees. The Executive Committee would recommend to the Senate the names of candidates, at which time nominations from the floor could be added. Dr. Pierpont pointed out, however, that Chairman E. K. Morris was retiring from the Board of Trustees in June, and it was not known what procedures the new Chairman would adopt. The Executive Committee did wish to express its intention of involving the Senate in the selection of candidates. That was as far as it could go at the present time; an agenda item on the matter might be in order for the last meeting of the 1971-72 session.

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President Elliott informed the Senate that a fund-raising dinner was being planned as an official function of the Board of Trustees to honor Chairman E. K. Morris on January 25, 1972, his 75th birthday. All proceeds of the \$100-a-plate dinner would go to the E. K. Morris Education Fund, the purpose of which is to give scholarships to students who are in financial need. Mr. Morris will retire from the Board on June 30, 1972.

President Elliott asked the Senate to share a problem of tact and diplomacy. It seemed undesirable for the University to send an official formal invitation to 800 faculty members. Rather, for those who wished to participate, there would be an announcement in the Monday Report about the dinner, and the direction that those who wished further information should call the President's office where the secretary would give details.

The President said he hoped he had succeeded in making clear the reasoning behind the rather delicate nature of the arrangement.

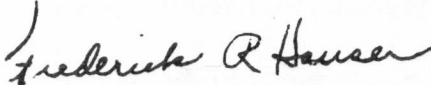
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Professor Kirsch referred to changes in the University Calendar during the last session, and remembered at the time the opposition predicted dire consequences. They did not occur. However, he did wish to refer the matter of the shorter calendar to the Educational Policy Committee for a poll of all full-time faculty, in the form of a short questionnaire, to find out if the faculty were in trouble, if they were cutting out material which should be included, or if they were having to talk too fast. He asked that the Committee report back to the Senate during the coming Spring Semester. President Elliott referred the matter to the Educational Policy Committee for consideration and report.

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Dr. Pierpont reminded the members that the next meeting of the Executive Committee would be held on November 30 should they have resolutions to submit for the agenda of the December meeting. He stated it was the intent of the Executive Committee to limit the agenda for the most part to consideration of the University Objectives Committee's report on the Commission on Governance Report of May 1971.

Minute 7 There were no further requests for the floor, the Chairman asked for a motion to adjourn, it was so moved and seconded, and the meeting ended at 2:50 p.m.


Frederick R. Houser
Secretary

GENERAL RULES OF PROCEDURE FOR COURTS AND HEARING BODIES

A-Preamble

The following General Rules of Procedure, approved by the Committee on the Judicial System in accordance with Section 222 of the George Washington University Judicial System for Non-Academic Student Discipline (hereinafter referred to as the Judicial System Statement), shall govern all non-academic judicial proceedings before the courts and hearing bodies of the University Judicial System, supplemented by such Special Rules as may be adopted in accordance with Section 222.1 of the Judicial System Statement.

The Judicial System Statement, the Statement of Student Rights and Responsibilities, the Human Relations Act, and such other general statements as may be adopted by the Board of Trustees, shall control in the event of conflict with any provision of these Rules.

Copies of these Rules shall be made available to the parties to proceedings before the courts and hearing bodies of the University, and to any other interested person requesting them.

B-General Rules Applicable to All Non-Academic Judicial Proceedings

1. Guiding Principle In all proceedings hereunder, fairness, rather than narrow legalisms or technical requirements, shall be the guiding principle.

2. Subpoena; Control of Proceedings All properly constituted courts and hearing bodies have the power to compel attendance and testimony of students found reasonably necessary to the trial of issues before them, and to control the demeanor of persons in attendance at judicial proceedings, including parties, witnesses, spectators and others, as provided in Sections 111 and 305 of the Judicial System Statement. Where reasonably necessary, a court or hearing body may warn, reprimand or censure persons before it, or prefer disciplinary charges, through the University Representative, to the judicial body having appellate jurisdiction over it. In addition, a court or hearing body has the authority, where reasonably necessary, to close a hearing to the public, adjourn proceedings, or surrender jurisdiction to the judicial body next above it.

3. Bias, Disqualification Any member of a court or hearing body who feels that he cannot in good faith and with an open mind adjudicate a case before it, shall disqualify himself. Each member shall notify the parties and other members of the court or hearing body of any circumstances which he believes might disqualify him or create a presumption of bias in a pending case. Any party to a judicial proceeding may request the withdrawal of a member of the court or hearing body, and if he declines to withdraw, the other members shall hear arguments and vote secretly on the question. If disqualifications or withdrawals reduce the court or hearing body to less than its required quorum, the case shall be heard at the next higher level. (for further detail, see Section 113 of the Judicial System Statement)

4. Public Hearings Hearings shall be open to the public, subject to the authority of the court or hearing body set out in General Rule 2, above; to its authority to require the retirement of any witness or witnesses

during the testimony of other witnesses; and to its right to move into executive session.

5. Adjournments The court or hearing body, through its presiding officer, may take adjournments upon the request of a party or upon its own initiative.

6. Time and Place for Hearings The time and place for each hearing shall be fixed by the court or hearing body through its presiding officer, and notice thereof shall be mailed or delivered to each of the parties at least three days prior thereto, unless notice is waived.

7. Representation by Adviser Any party may be represented by an adviser of his choice. A party intending to be represented by attorney shall notify the other parties and the court or hearing body at least three days prior to the date set for the hearing at which such attorney is first to appear.

8. Recording of Proceedings Transcription or taping of proceedings shall be at the discretion of the court or hearing body (except as hereinafter provided for disciplinary proceedings). If a tape or transcription is not made, the opinion or order of the court or hearing body must include sufficient detail as to the testimony, evidence and findings of fact as to facilitate appellate review.

9. Evidence, Exhibits All matters upon which the decision of a court or hearing body may be based must be introduced into evidence at the hearing. Evidence may be offered by the parties, or, when deemed necessary to a full consideration of the case, by members of the court or hearing body. All such evidence shall be taken in the presence of the court or hearing body and the parties except in case of waiver or default. Exhibits, when received into evidence, shall be marked and made part of the record. The presiding officer of the court or hearing body shall be the judge of the relevancy and materiality of the evidence offered, and conformity to legal rules of evidence shall not be required.

10. Testimony Under Oath The presiding officer of the court or hearing body may, in his discretion, require witnesses to testify under oath, administered by any duly qualified person.

11. Affidavits Evidence of witnesses by affidavit may be received, but the court or hearing body shall give such evidence only such weight as is deemed appropriate after consideration of any objections made to its admission.

12. Order of Proceeding The presiding officer of the court or hearing body shall open the hearing; determine, where required, the presence of a quorum; and take the appearances of parties, advisers and attorneys. The petitioner (or the University Representative in disciplinary proceedings before the Student Court or Student-Faculty Committee on Appeals) shall present his claim and proofs, and his witnesses, who shall submit to questions or other examination. The answering party shall then present proofs and witnesses, who shall submit to questions or other examination. The presiding officer of the court or hearing body may, in his discretion, vary this procedure, but shall afford full and equal opportunity to all parties and witnesses for presentation of any material or relevant proofs. The presiding officer

may make such orders and rulings, including consolidation or separation of issues and/or parties, as are inherently necessary to the effective conduct of trials and hearings.

13. Default Hearing may proceed in the absence of a party, who, after due notice, fails to be present or fails to obtain an adjournment. A final determination shall not be made solely on the default of a party. The presiding officer of the court or hearing body shall require the other party to submit such evidence as he may require for the making of such determination.

14. Closing Proceedings The presiding officer of the court or hearing body shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, he shall declare the hearing closed. By mutual consent of the parties, written briefs may be filed within such time as is directed by the presiding officer.

15. Final Determinations; Rulings by the Presiding Officer Final determinations by the court or hearing body shall be by majority vote. Rulings by the presiding officer may be questioned by any member of the court or hearing body, and shall be determined by majority vote.

16. Unreasonable Delay - Effect of Unreasonable delay on the part of any court or hearing body in accepting jurisdiction or proceeding to final determination shall constitute a surrender of jurisdiction over the case to the next higher court or hearing body.

17. General Powers of Courts and Hearing Bodies Courts and hearing bodies have three general powers: to issue orders to persons and organizations, to impose sanctions, and to make investigations into and reports upon matters within their jurisdiction. All are bodies of limited jurisdiction as provided in the Judicial System Statement and elsewhere.

18. Substance of Opinions, Orders and Reports Each opinion, order or report issued by a court or hearing body shall contain five distinct sections: 1) a statement establishing its jurisdiction over the parties and subject matter of the dispute; 2) findings of fact; 3) findings of law (rule, regulation, etc.), including rulings to which exception was taken; 4) brief discussion of the major findings and conclusions; and 5) the order or decision. Any member of the court or hearing body may file a dissenting or concurring opinion.

19. Role of Presiding Officer, Law Advisor, Members In addition to the foregoing General Rules, the attention of courts and hearing bodies is particularly directed to Sections 306, 306.1, and 307 of the Judicial System Statement.

C-General Rules Applicable to Non-Disciplinary Proceedings

20. How Proceedings Invoked Proceedings before a court or hearing body, other than disciplinary proceedings, shall be invoked by the filing of a written petition with the court or hearing body, setting forth a brief statement of the facts, including the basis of the court or hearing body's jurisdiction, and the relief or order sought. The court or hearing body shall promptly transmit copies to each member of the court or hearing body and to each of the parties to the case. Any party may, but shall not be required to, file an answering statement with the court or hearing body at any time prior to the hearing, contesting the jurisdiction of the court or hearing body, controverting any allegation of the petition, or raising any other relevant matter. Copies of any such answering statement shall similarly be transmitted to members of the court or hearing body and parties. The petition and answering statements may be written in plain language, and need conform to no formal rules of pleading.

21. Parties Parties to a proceeding shall include the petitioner; the person or organization against whom complaint is made or relief sought; the organization from whose initial decision appeal is taken, or which has waived jurisdiction to the court or hearing body, or whose action is alleged to violate the Statement of Student Rights and Responsibilities; and any other interested person or organization permitted to intervene by the court or hearing body.

D-General Rules Applicable to Disciplinary Proceedings

22. Courts Authorized to Hear Disciplinary Cases The composition and functions of the courts and hearing bodies authorized to hear disciplinary cases are described in the following Sections of the Judicial System Statement:

The Student Court: 206, 206.1, 206.2, 203
Student-Faculty Committee on Appeals: 210
Special Courts: 212, 213
Presidential Appeals Board: 214
Board of Trustees: 215
Administrative Officers: 218.2
Special Student-Faculty Hearing Committees: 204.1, 501

The attention of courts and hearing bodies is also directed to Sections: 207 - Committee on the Judicial System, 208 - Executive Secretary to the Judicial System, 209 and 303 - University Representative to the Judicial System, and 304 - Adviser for Defendants.

23. How Disciplinary Proceedings Invoked All disciplinary charges against students or organizations which are required or permitted to be brought before the Student Court, Student-Faculty Committee on Appeals, Presidential Appeals Board, Board of Trustees, or Special Student-Faculty Hearing Committees, shall be invoked by the University Representative to the Judicial System or his delegate, through the filing of a written complaint with the appropriate court or hearing body, with a copy to the student or organization complained against.

24. Selection of Court or Hearing Body The University Representative may institute disciplinary proceedings in the Student Court or lower courts as he deems appropriate; provided that if he certifies that a penalty of expulsion or suspension for more than one year may be appropriate, the complaint must be filed with the Student-Faculty Committee on Appeals.

25. Complaint Shall Contain: Charge and Penalty Sought The complaint shall contain a description of the alleged misconduct or violation in plain language and with sufficient particularity to permit the student or organization complained against to prepare for the hearing. It shall also indicate the penalty or order sought and the court or hearing body to which addressed.

26. Complaint Shall Contain: Student Defendant's Option, Representation The complaint shall contain a statement advising the student of his option under Section 202.1 and 202.2 of the Judicial System Statement, to have his case heard by a university administrative officer instead of a court, and of the fact that once the hearing has begun, the option may be exercised only for good cause. It shall further contain a statement advising the student of his right to be represented by an adviser of his choice, and that he has a right to have an adviser appointed to represent him without charge if he is unable to obtain one otherwise and wishes to have such representation.

27. Receipt of Complaint: Responsibilities of Court or Hearing Body Upon receipt of a complaint, the court or hearing body shall fix a date for the hearing without undue delay and advise the student or organization complained against and the University Representative. It is the responsibility of the court or hearing body to see to it that the student or organization complained against has received a copy of the complaint, a copy of the Judicial System Statement, a copy of the General Rules of Procedure for Courts and Hearing Bodies, a copy of any Special Rules applicable to proceedings before it, and a copy of the Statement of Student Rights and Responsibilities; and to see to it that the student defendant has an opportunity prior to the hearing to decide whether he wishes to be tried before a university administrative officer, or to be represented by an adviser of his choice. If the complaint certifies that a penalty of expulsion or suspension for more than one year may be appropriate, but the court or hearing body feels that such penalty would be excessive on the face of the complaint, it shall refer the case to the Student Court.

28. Power of Subpoena in Disciplinary Cases Courts and hearing bodies shall have the power in disciplinary cases to subpoena persons and University disciplinary records found reasonably necessary to the trial of such cases.

29. Recording of Proceedings in Disciplinary Cases In all proceedings in which a penalty of permanent reprimand, suspension or expulsion is sought, the hearing proceedings will be permanently recorded by tape or transcriber. A digest or summary shall be made of all proceedings, copies of which shall be provided to each of the parties. Copies of the full transcript shall be provided upon request at the expense of the party so requesting, provided that brief portions thereof may be provided upon request without expense, to facilitate appeal.

30. Rights of Students in Disciplinary Proceedings In addition to the rights herein described, students against whom disciplinary proceedings are invoked shall be accorded all of the rights described in Section V-B of the Statement of Student Rights and Responsibilities.

31. Trial Briefs The University Representative or his delegate shall, and other parties may, submit a legal memorandum in the nature of a trial brief summarily outlining the major legal arguments and critical issues of fact that the party intends developing in the course of the trial. Copies thereof shall be distributed by the court or hearing body to all parties.

32. Modification of Penalty or Order Sought, Settlement and Stipulation At the conclusion of the hearing, the University Representative may modify the penalty or order sought. At any point in the hearing, the parties may negotiate a settlement of the case and stipulate a penalty or order, which shall be binding on the court or hearing body unless the court or hearing body believes that it would result in substantial injustice.

33. Draft Opinion, Order or Report The University Representative or his delegate shall, and other parties may, submit a draft opinion, order or report in a manner favorable to his position. The court or hearing body may require a student's adviser to submit a draft of an order, ruling or opinion. Copies of any such draft opinions, orders, rulings or reports shall be distributed by the court or hearing body to all parties.

34. Charge to the Court The presiding officer of the court or hearing body shall charge the court or hearing body in the manner set out in Section 308 of the Judicial System Statement.

35. Sanctions The authority of the various courts and hearing bodies with regard to sanctions is described in detail in Sections 223.4, 223.5, 224.1, 224.2, 224.3, 224.4, 224.5, 224.6, 224.7, 224.8, and 225, subsections .1 through .8 of the Judicial System Statement. The court or hearing body is not bound to choose between the sanction requested by the University Representative and that requested by the defendant, but may vary and shape an appropriate penalty or order in its discretion.

E-General Rules Applicable to Appeals

36. Appeals from Final Orders The question what constitutes a final order from which appeal may be taken is discussed in Section 220 of the Judicial System Statement.

37. Functions of Appellate Bodies Appellate courts and hearing bodies have four functions, as described in Section 309 of the Judicial System Statement:

- 1) to make sure that the action of the lower court or hearing body was fair and just, and in accordance with University rules and regulations;
- 2) to correct errors or misunderstandings below with carefully worded opinions, and remands with specific instructions;
- 3) to educate the lower body and all members of the judicial system as to the requirements, limitations and responsibilities of the system;

4) to facilitate development of sound and reasoned applications of University rules, regulations and common law.

38. How Appeals Instituted Any party permitted to appeal from the final order of a court or hearing body may do so by filing notice of appeal with such court or hearing body, which shall transmit copies to each of the other parties and to the court or hearing body having appellate jurisdiction of the case. Upon receipt by the appellate body, such notice shall constitute the petition for appellate review.

39. Who May Appeal Subject to such special rules and regulations as may be applicable, any student subjected to a significant injury, and any party whose interests are significantly prejudiced or injured by a final order of a court or hearing body may appeal to the next higher body.

40. Appeal as a Matter of Right A student who receives a penalty of expulsion, suspension or permanent reprimand may appeal the decision as a matter of right.

41. Appeal at the Discretion of the Appellate Body All other appeals will be heard at the discretion of the appellate body.

42. Brief of Petitioner Within five days after filing notice of appeal, the party seeking appellate review of a decision, order or report will submit a written brief specifying the specific issues for which review is sought and the grounds upon which exception is taken to the finding or ruling below.

43. Record of Proceedings Below Upon receipt of notice of appeal, the court or hearing body from which appeal is taken shall as soon as possible provide the appellate court with a copy of its decision, order or report, together with the transcript, tape or other record of the proceedings, exhibits, if any, and summary or digest, if any.

44. Guidelines for Reviewing Findings and Reasoning of the Lower Court or Hearing Body :

1) Findings of fact should not be reversed unless clearly erroneous on the basis of the record as a whole;

2) In non-disciplinary cases, and in disciplinary cases where the record below is unsatisfactory and the appellate body has authority to try cases de novo, additional testimony and evidence may be received;

3) Inferences from findings of fact may be reversed when the appellate body is left with the definite and firm conviction that the inference is mistaken;

4) Findings of law, rule and regulation and the inferences therefrom are fully reviewable, with no presumption of correctness;

5) The reasoning of the lower body similarly is fully reviewable.

45. Correction of Decision Below or Remand - When The appellate court may correct the decision below, and should do so when additional testimony has been taken, or when fairness and expedition will be served thereby. It may, in its discretion, remand a case, but shall do so with specific instructions to the lower court.

46. Correction of Disciplinary Decisions and Rulings The appellate body may modify any order or ruling, including the assessment of penalties.

47. Courts and Hearing Bodies Authorized to Hear Appeals in Disciplinary Cases The following sections of the Judicial System Statement describe the authority of the courts and hearing bodies in disciplinary appeals:

- 218.1 - routes of appeals unless otherwise provided by charter
- 213 - appeal to Student Court from Special Courts and non-chartered courts
- 210 - Student-Faculty Committee on Appeals
- 214 - Presidential Appeals Board
- 215 - Board of Trustees

Appeal from administrative actions is described in Section 218.2, and appeal from non-judicial punishment in Section 223.8.

THE GEORGE WASHINGTON UNIVERSITY
Washington, D. C.

The Faculty Senate

November 4, 1971

The Faculty Senate will meet on Friday, November 12, 1971, at 2:10 p.m., in the Faculty Conference Room on the sixth floor of the Library.

Agenda

- 1) Call to order
- 2) Minutes of the regular meeting of October 8, 1971
- 3) Special Business

Reconsideration of the January 14, 1972, meeting of the Senate (reference -- Minute 3c, May 14, 1971, Senate Minutes); the Executive Committee recommends that this meeting which occurs during the January Intersession be cancelled.

- 4) Report out of committee by Charles Nutting, Chairman of the Committee on the Judicial System (attachments to Senate members only):
 - a) Presentation of "General Rules of Procedure for Courts and Hearing Bodies" for Senate information
 - b) A RESOLUTION CONCERNING EDITORIAL CHANGES IN THE DOCUMENT RELATING TO THE GEORGE WASHINGTON UNIVERSITY JUDICIAL SYSTEM FOR NON-ACADEMIC STUDENT DISCIPLINE (71/5)

- 5) General Business

- a) Nomination and election of Hugh L. LeBlanc, Professor of Political Science and Public Affairs, as Chairman, Senate Committee on Physical Facilities, to replace Chairman Herman H. Hobbs during his sabbatical leave, Spring Semester 1972
 - b) Nomination and election of Presson S. Shane, Professor of Engineering Administration, as Acting Chairman of the Senate Committee on Appointment, Salary and Promotion Policies, to replace Chairman Arthur D. Kirsch during his sabbatical leave, Spring Semester 1972.
 - c) Interim Report on the May 1971 Report of the Commission on Governance by Chairman David Robinson, Jr., Committee on University Objectives.
- 6) Brief Statements
 - 7) Adjournment

Frederick R. Houser
Frederick R. Houser
Secretary

A RESOLUTION CONCERNING EDITORIAL CHANGES IN THE DOCUMENT
RELATING TO THE GEORGE WASHINGTON UNIVERSITY JUDICIAL SYSTEM
FOR NON-ACADEMIC STUDENT DISCIPLINE (71/5)

WHEREAS, Section 301 of the document relating to The George Washington University Judicial System provides that the Committee on the Judicial System shall prepare and submit to the Executive Committee of the Faculty Senate "such reforms and amendments as are required by the system"; and

WHEREAS, the Committee has determined that certain editorial changes should be made to reflect modifications which have been effected through Senate action and to remove certain provisions which refer to academic discipline, not within the scope of the system; and

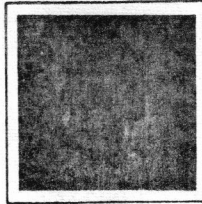
WHEREAS, the Committee has recommended the deletion from the document relating to the judicial system of all references to Section 219, which was stricken by action of the Faculty Senate on December 11, 1970, and the deletion of all sections referring to academic discipline, which is not within the scope of the system and has filed its recommendations with the Executive Committee; now therefore,

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY:

That the recommendations of the Committee on the Judicial System be approved and that the changes recommended be incorporated in the document relating to the judicial system.

Committee on the Judicial System
and
The Executive Committee of the Faculty Senate

November 2, 1971



Committee on the Judicial System

October 22, 1971

MEMO FOR: Dr. Howard Pierpont, Chairman
Executive Committee of the Faculty Senate

As Chairman of the Committee on the Judicial System, I would like to communicate the following actions taken by the Committee at our October meeting.

As required by Section 222 of the Judicial System, the Committee was to prepare and maintain rules governing general procedural matters. To this end, Professor Richard C. Allen, University Representative, and Director of the Law, Psychiatry and Criminology Institute, has prepared a draft of these rules. The Committee met on October 21 and recommended approval of these rules for implementation by the various courts of the Judicial System. This does not preclude any court from preparing and publishing rules governing procedures peculiar to themselves as provided in Section 222.1 of the Judicial System.

In other action, the Judicial Committee recommended that references to the non-existing section 219 of the Judicial System be deleted in order to provide consistency in the document. Sections 218.3 Academic Actions and 225.5 Student-Faculty Committee on Academic Discipline should be deleted in their entirety because of the non-academic nature of the Judicial System.

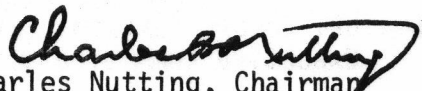
The Committee also adopted Professor Richard Allen's recommendation to edit Section 218 Order of Appeals and Section 110 Referral of Cases to the Hearing Bodies to provide further clarification of the Judicial System.

The specific editorial reforms and amendments are included for consideration by the Faculty Senate (see enclosures).

MEMO FOR: Dr. Howard Pierpont, Chairman

October 22, 1971

Such reforms and/or amendments are consistent with the duties of the Committee on the Judicial System described in Section 301 of the Judicial System.


Charles Nutting, Chairman
Committee on the Judicial System

cc (with enclosures):

Members, Committee on the Judicial System
William P. Smith, Jr., Vice President for
Student Affairs
President Elliott

enclosures:

Recommended Rules Governing General Procedural Matters
Recommended reforms of the Judicial System

Recommended Reforms and/or Amendments to
The George Washington University Judicial System
For Non-Academic Student Discipline

Section 210. Student-Faculty Committee on Appeals should be amended to read:

A committee of four students and four faculty members, at least one of whom will be a tenured member of the law faculty, will be named the Student-Faculty Committee on Appeals and will have appellate and limited original jurisdiction as follows: original jurisdiction over all cases in which the University Representative certifies that expulsion or suspension greater than one year may be appropriate as a penalty; ~~jurisdiction-for-the-trial-process-whenever-a-party petitions-the-court-to-accept-such-jurisdiction-as-provided-in Section-219-(3);-interim-appellate-jurisdiction-as-provided-in Section-219.~~; appellate jurisdiction as otherwise provided in this chapter; and jurisdiction over novel and extraordinary matters not appropriate for trial by the Student Court. The President of the University will appoint the members from lists of five or more faculty nominees provided by the Faculty Senate and of five or more student nominees provided by the student assembly - or in the absence of such a body, by the student members of the Committee on the Judicial System.

Section 218.2 Administrative Actions should be amended to read:

The hearing officers of the administrative class will be the Vice President for Student Affairs or some administrator or faculty member or non-University person named by the Vice President for Student Affairs. The selection of the hearing officer will be made with special consideration of the provisions for disqualification of Section 113. The routes of appeal from the administrative hearing officer will be to the Presidential Appeals Board on all questions of guilt or innocence, findings of fact, appropriateness of the sanction, and allegations of bias or prejudice or other questions of suitability or fitness of the hearing officer. ~~Appeals-from-final-orders-based upon-questions-of-law,-of-construction-of-rules-and-regulations,-and of-procedures-or-student-rights-may-be-appealed-to-the-Student-Faculty-Committee-on-Appeals-at-the-discretion-of-that-Committee,-as provided-in-Section-219,-or-to-the-Presidential-Appeals-Board-at-the discretion-of-that-Board,-as-provided-in-Section-219.~~ At its discretion, either the Student-Faculty Committee on Appeals or the Presidential Appeals Board, may, after hearing argument by parties, direct the appeal to the other appellate body, the issues to then be acted upon or not within the discretion otherwise provided that body.

Section 218.2 Administrative Actions (cont.):

The purpose of the alternative routes of appeal for matters of law, of construction of regulations, and of procedures and student rights is to promote the uniform and systematic interpretation of such matters, but to permit an alternative route when necessary to protect the student rights of privacy, confidentiality and choice of an administrative decision maker. Questions of law, rules and regulations construction, and of procedure and student rights which cannot be purged of sensitive matters that might significantly invade the privacy of the student defendant or of other students or persons involved in any way will not be heard by the Student-Faculty Committee on Appeals but will be referred to the Presidential Appeals Board upon the objection of any party, witness, person involved in any identifiable way or by the University on behalf of such persons not present. Appeals from the Presidential Appeals Board on administrative actions will be to the Board of Trustees.

Section 305. Demeanor of Members, Counsel, Witnesses and Parties should be amended to read:

A system of student courts and hearing bodies and of student-faculty hearing bodies can be effective only to the extent that the cooperation of all participants assures an orderly and fair development of testimony and arguments. All persons before the courts or hearing bodies and the members of such bodies themselves are expected to show respect and consideration to one another so that the fact-finding and legal analyses may proceed in a reasoned and reliable way. The courts and hearing bodies have the power to warn disorderly or disruptive persons, to order them from the room, to close the hearing to the public, to reprimand or censure persons before the court and to adjourn the hearing until some later time or other place. The courts and hearing bodies have the affirmative duty to exercise such powers to protect the persons before them from embarrassment, harassment, abuse, or ad hominem attacks from counsel, parties, witnesses or other persons. Disorderly, abusive or disruptive conduct, or other acts of contempt, may result in disciplinary action against the offenders by the court or hearing body having appellate jurisdiction over the body in question. Such disciplinary procedures are necessary to protect the utility of student courts and hearing bodies and of administrative procedures generally as fair and reliable fact-finding processes. Any members of the court or hearing body, counsel, party, witness or intervenor may ask the court to protect them against abuse or harassment and to assure them an orderly forum for the trial of issues of fact and law. The primary responsibility for this protection lies with the presiding officer, but all members of the court have a duty to assert the power of the court to assure an orderly, fair proceeding. Failure of the court members, or of the members of any hearing body, to control the proceeding and to assure a fair trial will be grounds for removal. A complaint to the appellate body against specific persons or as an attack upon the validity of any action taken as a result of an improper, unreliable proceeding may be made by any party to the action injured by such action. If the court or hearing body cannot control a proceeding, it shall terminate the session by

Section 305. Demeanor of Members, Counsel, Witnesses and Parties (cont.):

adjourning, shall confer among its members as to the possibilities of resuming at some later time with cooperation of counsel and parties, and, if such resumption seems futile, shall surrender jurisdiction to the body immediately above it in the appellate structure. Parties may ask the appellate body to relieve the court or hearing body and to try the case itself, as provided in Section 219.

Section 218.3 Academic Actions should be deleted entirely as it is not consistent with the non-academic nature of the Judicial System:

Appeals from the Student-Faculty Committee on Academic Discipline will be to the Presidential Appeals Board and from that body to the Board of-Trustees.

Section 225.5 Student-Faculty Committee on Academic Discipline should be deleted entirely as it is not consistent with the non-academic nature of the Judicial System:

~~The Student-Faculty Committee on Academic Discipline may impose any punishment or requirement that might be imposed by the college or school delegating the case to it.~~

Section 218. Order of Appeals should be edited to read:

Actions taken at any hearing level as described in this section may be appealed to the next hearing level of the same class, subject to the exception provided in Section 218.2 as to questions of law, construction of regulations, and procedures. ~~Three~~ Two classes of action are established as follows: disciplinary and administrative. ~~and-academic.~~

Section 110. Referral of Cases to the Hearing Bodies should be amended to read:

In establishing the hearing bodies it is not the University's intent to judicialize every infraction of rules or regulations. The intent is to provide an all-student adjudicatory body and a joint student-faculty hearing body that will try cases involving serious breaches of University rules, the violation of which may result in the imposition of penalties such as expulsion, suspension, permanent reprimand or other stigmatizing personnel action. The case in which expulsion or suspension for more than one year is sought by the University will be tried originally by the Student-Faculty Committee on Appeals. Alternative sanctions for misconduct which may be imposed administratively include informal warnings, informal reprimands, letters of warning or reprimand to the student or to the student and his parents, and administrative probation. Whether an administrator should rely upon his inherent authority or seek the additional sanctions available through the hearing bodies must be a matter of discretion. The experience and advice of the University Representative, Section 209, should be sought in doubtful cases, since that officer must ultimately decide whether the case will be brought on behalf of the University. Some questions that reflect what should be the controlling considerations are the following:

Section 110. Referral of Cases to the Hearing Bodies (cont.):

- (a) Is this conduct so injurious to the University or to members of the University community that a penalty as serious as suspension or expulsion should be sought?
- (b) Is this conduct so symbolic or representative in character of misconduct to the University or its members that a serious penalty should be sought for its deterrent value?
- (c) Is this student so recalcitrant and unresponsive to warnings and counsel that a serious penalty must be imposed on him to induce conformance to University rules?
- (d) Is this student so seriously deviant or threatening to the University community that his temporary or permanent suspension or expulsion should be sought?